

## What is a 1031 Exchange?

At time when most tax shelters have been abolished, one remains: the tax deferred exchange. An exchanger continues his/her investment selling one piece of property (the relinquished property /first leg and then uses the proceeds to purchase a second property (the replacement property /second leg). Under internal Revenue Code §1031, the Exchanger may defer the gain realized by reinvesting in "like-kind" property. In this way, the taxpayer can reinvest 100% of the sales proceeds without paying any capital gains tax.

Once an Exchanger has transferred the relinquished property, several requirements must be satisfied to qualify as a tax deferred exchange under §1031. The taxpayer must identify "like-kind" replacement property within 45 days from the first closing and close on the replacement property(S) within 180 days of the closing of the relinquished property.

## §1031 Exchanges: An Overview

Internal Revenue Code §1031:

"No gain or loss shall be recognized on the exchange of held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment."

§1031 exchanges provide investors with one of the best tax strategies for preserving the value of an investment portfolio. By using an exchange, the investor is able to defer the recognition of capital gain taxes that would otherwise be incurred on the sale of investment property. The investor can then use the entire amount of the equity to purchase substantially more replacement property. To qualify as an exchange the relinquished and replacement properties must be qualified "like kind" properties and the transaction must be structured as an exchange. Using Bill Jay Corp. as the "Qualified Intermediary" will provide the investor with the necessary reciprocal transfer of properties and the "Safe Harbor" protection against actual and constructive receipts of the exchange funds as required by §1031.

## What is Qualified Intermediary?

A qualified intermediary is an independent third party, or "middleman", who enters into an exchange agreement with the taxpayer/Exchanger, acquires the original property, sells it to the buyer and holds the proceeds until the Exchanger identifies the replacement property. The regulations encourage the use of a qualified intermediary throughout the exchange.

## What should I look for in a Qualified Intermediary?

With an IRC §1031 exchange escrow, care should be exercised in selecting an experienced and professional qualified intermediary who is familiar with exchanges and can satisfy the practical concerns of the parties.

The qualified intermediary should be a corporation instead of an individual, primarily because a corporation has unlimited life. The death or incapacity of an individual acting as the qualified intermediary could subject the exchange to a probate action and cause serious delays or even jeopardize the exchange.

Now:

## Requirements and Procedures of the §1031 Tax Deferred Exchange

In order for your property to qualify for a §1031 exchange escrow the following must be true:

1. Both the relinquished property and the replacement property must be held either for investment or for productive use in a trade or business.
2. The property must be like kind. Real property must be exchanged for real property. Personal property must be exchanged for personal property.
3. There must be an actual reciprocal transfer of properties – a deed for a deed.

The escrow company handling the escrow for the relinquished property sends the accommodator, (Exchange Company you selected) Instructions and the Preliminary Title Report. From that information the Exchange Company you selected. prepares an Exchange Agreement and an Assignment of Party's Interest to Complete Exchange. These documents are returned to escrow to obtain the signatures of you, the Exchanger, and the Buyer. When the relinquished property escrow close you will receive a letter from the Exchange Company you selected. advising you of the date your escrow closed, and the amount of funds they received from escrow. You will also receive a property identification form with the letter which you close of escrow of your relinquished property.

For more Information you must talk with an Exchange Company that you select as Information differs from each company.